

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF)	
CHANCE ALONG FARM, INC. FOR A LIMITED-)	FINDINGS OF FACT,
PURPOSE EXPERIMENTAL AQUACULTURE)	CONCLUSIONS OF LAW AND
LEASE LOCATED IN THE HARRASEEKET)	DECISION
RIVER, SOUTH FREEPORT, CUMBERLAND)	
COUNTY, MAINE)	

On December 1, 2000, Chance Along Farm, Inc. of Freeport, Maine, applied for a limited-purpose (experimental) commercial type, aquaculture lease totaling 0.007 acres in the coastal waters of the State of Maine, located at Brewer's South Freeport Marine in the Harraseeket River, South Freeport, Cumberland County, Maine. The applicant requested the lease for a term of three years for the purpose of cultivating American oysters, surf clams, quahogs and European oysters using suspended culture techniques.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that the Commissioner of the Department of Marine Resources (DMR) may grant a limited-purpose lease if he determines that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

As provided for in 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on this application unless a hearing is requested in writing by five (5) or more interested parties. Notice of the application was published in the February 27, 2001 issue of the *Times Record* newspaper. No written comments or requests for a hearing were received during the comment period established in 12 M.R.S.A. §6072-A(5).

Evidence Concerning the Nature and

Impact of the Proposed Lease

12 M.R.S.A. §6072-A(8) and the Department's regulations, Chapter 2.64(2) require the applicant to provide an application for a limited-purpose (experimental) aquaculture lease. This proposed experimental lease is sought to conduct commercial research and development on the viability of raising American oysters, surf clams, quahogs and European oysters. The applicant requests the maximum lease term of three (3) years and 0.007 acres, having the approximate dimensions of 8 by 40 feet. The site would be located within boat slips at Brewer's South Freeport Marine's dock system in South Freeport, Cumberland County, Maine. The applicant requests authority to grow American oysters, surf clams, quahogs and European oysters using suspended culture techniques.

The operation would include the use of two floating upweller units (FLUPSY's) tied end to end off a pier referred to as the "dingy dock" at the marina. A single FLUPSY unit is an 8 by 20-foot float that holds circular silos that contain seed shellfish. Seawater is pumped through the silos creating a flow of water that provides nutrients to the seed shellfish. No bottom planting or grow-out to market sized shellfish is proposed. All seed shellfish would originate from shellfish nursery or hatchery facilities located in Maine. Only seed size shellfish would be raised in the FLUPSY units at the proposed lease.

Access to the proposed lease would be gained via the marina or from the Harraseeket River by boat. The applicant would occupy the proposed lease in a manner similar to a boat located in dock space rented from the marina. A representative of the marina provided a letter indicating approval of the use of boat slips for an aquaculture lease.

The application describes the subtidal water depths as 4 feet at mean low water (mlw). The bottom sediments are firm mud. The marina area has been dredged in recent years. Tidal currents are stated to be less than approximately 1½ knots at the maximum ebb and flood tides. No flora or fauna was described to occur within the proposed lease. Local flora was listed as a green filamentous algae on the nearby rocks.

A DMR Regional Biologist provided an evaluation of the proposed lease. He visited the proposed lease site on October 4, 2000. The proposed lease would be located within an active boat marina and in his opinion, the proposed activities would be compatible with the existing marina area uses.

The Department's Assistant Environmental Coordinator (AAEC) visited the proposed site on April 26, 2001 and provided a site report on the proposed lease. In the AAEC's opinion, the proposed 8 x 40 foot lease dimensions could interfere with vessel traffic accessing the dingy pier because the FLUPSY units would extend 40 feet away from the pier with the 8-foot side adjacent to the pier. The AAEC recommended that the dimensions be changed to 16 x 20 feet placing the FLUPSY units side-by-side along 16 feet of the pier instead of 8 feet therefore reducing the distance the units would extend into the waterway. The AAEC provided differential global positioning system (dGPS) geodetic coordinates for the corners adjacent to the "dingy pier".

In the AAEC's opinion the proposed lease would not interfere with commercial or recreational fishing. The proposed lease is not located within or near any designated essential or significant wildlife habitats regulated by the Department of Inland Fisheries and Wildlife (IF&W). The area of the proposed lease is classified as "closed" from May 1 through November 30 and "conditionally open" from December 1 through April 30 by the Department's Public Health Division.¹ This status requires that seed shellfish removed from the upweller units be sold or transferred to existing lease sites or locations, in compliance with Department regulations and permit requirements.² According to the Director of the Department of Marine Resources Public Health Division, the classification of this area is not anticipated to be changed to the open/approved classification during the next 3 years.

¹ DMR Regulation 95.03 I, Closed Area No. 17, Harraseeket River. Effective April 27, 2001.

² Shellfish sanitation regulations require a permit for the transfer of shellfish from a closed area to an open approved open area.

Findings of Fact

The proposed lease is located within a marina and would occupy boat slip space. The proposed lease is located in shallow waters with 4 feet at mean low water. This was confirmed in a site visit to the area by the Department's Assistant Aquaculture Environmental Coordinator (AAEC), on April 26, 2001. A letter of permission for the applicant to occupy docking space for the proposed aquaculture activities was provided by a representative of the marina. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of the riparian owner.

The proposed lease is not located within a navigation channel. The Area Biologist provided confirmation that the activities would not interfere with boating or marina activities in the area. The AAEC recommended altering the proposed dimensions to reduce interference with vessels accessing the "dingy" pier. Based on this evidence, I find that the lease will not unreasonably interfere with navigation in the area with the lease dimensions changed from 8 x 40 feet to 16 x 20 feet.

Only seed shellfish would be raised. The Department's Public Health Division Director has indicated that the area is not anticipated to be reclassified as "open", within the next three years. The application indicated that only marina-related activities currently take place on the proposed lease when it is active. Based on the evidence that there is no commercial or recreational fishing within the proposed lease area and that the area water quality classification of "closed" and "conditionally closed" is not anticipated to be reclassified as open within the next three years; I find that the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area.

The application describes only the presence of a green filamentous algae on the shore as the extent of the local flora and no fauna. The bottom sediments were described as a firm mud. Only indigenous stocks of American oysters, surf clams, quahogs and European oysters are proposed to be used. Bottom planting of individual shellfish was not requested. The

proposed lease is not located within any Department of Inland Fisheries and Wildlife regulated essential or significant wildlife habitat. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

The American oysters, surf clams, quahogs and European oysters would be obtained from the shellfish nurseries or hatchery facilities located in Maine. Based on this evidence, I find that there is an available source of American oysters, surf clams, quahogs and European oysters.

According to the application, the proposed lease is located within 1,000 feet of land owned by the Town of Freeport Sewer District that is adjacent to the marina property. According to the Area Biologist the proposed activities would not pose interference with the boating uses of the area. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment given that the proposed lease site is located within 1,000 feet of municipally owned property, and not within 1,000 feet of any state or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters, surf clams, quahogs and European oysters; and
6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the requested limited-purpose commercial lease of 0.007 acres, with the dimensions of 16 x 20 feet, to the applicant for a period of three (3) years from the date of this decision, for the purposes of cultivating American oysters, surf clams, quahogs and European oysters using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources